

ESTTA Tracking number: **ESTTA303699**

Filing date: **08/31/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	KELLOGG NORTH AMERICA COMPANY
Granted to Date of previous extension	09/13/2009
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES
Correspondence information	DAVID A HERDMAN ASSISTANT SECRETARY/CORPORATE COUNSEL KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES trademarks@kellogg.com Phone:269-961-2170

### Applicant Information

Application No	77454574	Publication date	03/17/2009
Opposition Filing Date	08/31/2009	Opposition Period Ends	09/13/2009
Applicant	TAINAN ENTERPRISES CO., LTD. 320, Sec.3, Chung San Rd., Nan Hsin Tsun Kuei Jen Hsiang Tainan Hsien, TAIWAN		

### Goods/Services Affected by Opposition


Class 018. All goods and services in the class are opposed, namely: Animal skins; trunks and traveling bags; umbrellas, parasols and walking sticks; leather, imitation leather and goods made of leather and imitations of leather, namely, purses and wallets, satchels, trunks, all-purpose sport bags, all-purpose athletic bags, all-purpose carrying bags; attache cases; backpacks; leather bags for merchandise packaging in the nature of envelopes and pouches of leather; all purpose bags for camping and all purpose bags for climbers; hunter's game bags; garment bags for travel; shopping bags made of mesh; bands of leather; beach bags
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition


U.S. Registration	1151162	Application Date	03/08/1979
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No.			
Registration Date	04/14/1981	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1978/04/10 First Use In Commerce: 1978/04/10 CEREAL DERIVED FOOD PRODUCT TO BE USED AS BREAKFAST FOOD; SNACK FOOD OR INGREDIENT FOR MAKING CONFECTION		

U.S. Registration No.	1672993	Application Date	01/25/1990
Registration Date	01/21/1992	Foreign Priority Date	NONE
Word Mark	TONY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 RECIPE CARDS, RECIPE BOOKS, RECIPE BOOKLETS AND RECIPE PAMPHLETS		


U.S. Registration No.	1697609	Application Date	07/08/1991
Registration Date	06/30/1992	Foreign Priority Date	NONE
Word Mark	TONY'S TIGER BITES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 printed recipes in the form of package panels, recipe cards, cookbooks, pamphlets and brochures containing recipes		

U.S. Registration No.	2013885	Application Date	12/28/1995
Registration Date	11/05/1996	Foreign Priority Date	NONE
Word Mark	TONY		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 clothing, namely, golf shirts, polo shirts, sport shirts, T-shirts, sweat shirts, night shirts, sweaters, jackets, shorts, caps, stocking hats and scarves

U.S. Registration No.	2030068	Application Date	01/03/1996
Registration Date	01/14/1997	Foreign Priority Date	NONE
Word Mark	TONY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1985/00/00 First Use In Commerce: 1985/00/00 sporting goods and toys, namely, baseballs, golf bags, golf balls, golf club head covers, flying discs, toy vehicles, toy train sets, Christmas tree ornaments		

U.S. Registration No.	2136777	Application Date	08/29/1996
Registration Date	02/17/1998	Foreign Priority Date	NONE
Word Mark	TONY		


Design Mark	
Description of Mark	The mark consists of the upper body of the famous TONY THE TIGER character crossing his arms which are orange with black stripes. His chest and front portion of his face and ears are white. There are black stripes around his head, with black eyebrows, whiskers, hairs and black around his ears. His nose is orange with a blue tip. He has a red scarf around his neck with the word TONY near the knot. His tongue is red and his eyes are yellow.
Goods/Services	Class 041. First use: First Use: 1992/06/07 First Use In Commerce: 1992/06/07 entertainment services, namely, participating in motorsports racing events

U.S. Registration No.	2594428	Application Date	06/04/2001
Registration Date	07/16/2002	Foreign Priority Date	NONE
Word Mark	THE GR-R-REAT TONY BALLOON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Entertainment services in the nature of participation in hot air balloon contests and shows, static displays by cold air balloons and providing rides in a hot air balloon		

U.S. Registration No.	2659501	Application Date	06/04/2001
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	TONY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00		


	ENTERTAINMENT SERVICES IN THE NATURE OF PARTICIPATION IN HOT AIR BALLOON CONTESTS AND SHOWS, STATIC DISPLAYS BY COLD AIR BALLOONS AND PROVIDING RIDES IN A HOT AIR BALLOON		
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U.S. Registration No.	2882851	Application Date	11/01/2001
Registration Date	09/07/2004	Foreign Priority Date	NONE
Word Mark	TONY'S FROSTED CRUNCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/10/02 First Use In Commerce: 2003/10/02 Cereal-derived food product to be used as a breakfast food, snack food or ingredient for making food		

U.S. Registration No.	2916395	Application Date	12/09/2003
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	TONY THE TIGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1952/00/00 First Use In Commerce: 1952/00/00 Processed, cereal-derived food product to be used as a breakfast food, snack food and ingredient for making food		

U.S. Registration No.	3136431	Application Date	12/10/2002
Registration Date	08/29/2006	Foreign Priority Date	NONE
Word Mark	TONY'S CINNAMON KRUNCHERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/03/12 First Use In Commerce: 2003/03/12		

	Processed, cereal-derived food product to be used as a breakfast cereal, snack food, or ingredient for making food
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U.S. Registration No.	3148562	Application Date	10/24/2005
Registration Date	09/26/2006	Foreign Priority Date	NONE
Word Mark	TIGER POWER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2004/12/31 First Use In Commerce: 2005/01/07 Breakfast cereals		

Related Proceedings	44454594, 77454588
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Attachments	73206492#TMSN.gif ( 1 page )( bytes ) 75038216#TMSN.gif ( 1 page )( bytes ) 75039671#TMSN.gif ( 1 page )( bytes ) 75160545#TMSN.jpeg ( 1 page )( bytes ) 78067203#TMSN.gif ( 1 page )( bytes ) 78338199#TMSN.jpeg ( 1 page )( bytes ) 78192872#TMSN.jpeg ( 1 page )( bytes ) 78739246#TMSN.jpeg ( 1 page )( bytes ) TONY #77454574 Opposition Notice Scan.doc.pdf ( 7 pages )(271174 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/DAVID A HERDMAN/
Name	DAVID A HERDMAN
Date	08/31/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>KELLOGG NORTH AMERICA COMPANY</b>	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	Serial No. 77/454,574
<b>TAINAN ENTERPRISES CO., LTD.</b>	)	Mark: TONY
	)	Filing Date: April 22, 2008
Applicant.	)	Publication Date: March 17, 2009
	)	

**NOTICE OF OPPOSITION**

Kellogg North America Company, a Delaware corporation, located and doing business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016, (hereinafter called "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/454,574 in Class 18, filed by the Tainan Enterprises Co., Ltd. (hereinafter "Applicant") on April 22, 2008, and opposes Application Serial No. 77/454,574.

The grounds for this opposition are as follows:

1. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest, Kellogg Company, have engaged, and Opposer is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of food products, and an ever expanding range of licensed and promotional non-food products and services.

2. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest, Kellogg Company, have used, and Opposer is now using Opposer's TONY, TONY THE TIGER, TONY & DESIGN and TIGER DESIGN trademarks in connection with said food products, as well as a wide range of promotional and licensed products distributed

and sold by Opposer and its authorized licensees in commerce, including clothing, toys, games, sports equipment, jewelry and has also used the TONY, TONY THE TIGER, TONY and Design and TIGER DESIGN marks in connection with live performances by the famous spokescharacter, TONY THE TIGER.

3. Opposer is owner of, and will rely herein, upon the following Federal Trademark registrations:

MARK	REG. NO.	ISSUE DATE	GOODS
TONY Design	1151162	04/14/1981	Cereal derived food product to be used as breakfast food; snack food or ingredient for making confection
TONY'S	1672993	01/21/1992	Recipe cards, recipe books, recipe booklets and recipe pamphlets
TONY'S TIGER BITES	1697609	06/30/1992	Printed recipes in the form of package panels, recipe cards, cookbooks, pamphlets and brochures containing recipes
TONY & Design	2013885	11/05/1996	Clothing, namely, golf shirts, polo shirts, sport shirts, T-shirts, sweat shirts, night shirts, sweaters, jackets, shorts, caps, stocking hats and scarves
TONY & Design	2030068	01/14/1997	Sporting goods and toys, namely, baseballs, golf bags, golf balls, golf club head covers, flying discs, toy vehicles, toy train sets, Christmas tree ornaments
TONY & Design	2136777	02/17/1998	Entertainment services, namely, participating in motorsports racing events.
THE GR-R-REAT TONY BALLOON	2594428	07/16/2002	Entertainment services in the nature of participation in hot air balloon contests and shows, static displays by cold air balloons and providing rides in a hot air balloon



<b>MARK</b>	<b>REG. NO.</b>	<b>ISSUE DATE</b>	<b>GOODS</b>
TONY & Design	2659501	12/10/2002	Entertainment services in the nature of participation in hot air balloon contests and shows, static displays by cold air balloons and providing rides in a hot air balloon
TONY'S FROSTED CRUNCH	2882851	09/07/2004	Cereal-derived food product to be used as a breakfast food, snack food or ingredient for making food
TONY THE TIGER	2916395	01/04/2005	Processed, cereal-derived food product to be used as a breakfast food, snack food and ingredient for making food
TONY'S CINNAMON KRUNCHERS	3136431	08/29/2006	Processed, cereal-derived food product to be used as a breakfast cereal, snack food, or ingredient for making food
TIGER POWER	3148562	09/26/2006	Breakfast cereals

The above registered marks are valid, subsisting and conclusive evidence of Opposer's exclusive right to use the above registered marks in commerce for the goods and services specified in said registrations.

4. In addition to the registered marks specified above, Opposer shall rely herein upon its common law usage of its other TONY, TONY THE TIGER, TONY & DESIGN and TIGER DESIGN marks, including devices showing portions of the TIGER DESIGN including TIGER PAW and TIGER TAIL Designs, as well as many other common law TIGER word marks, for its promotional and licensed uses, which together with the marks noted above form a family of valuable "TONY" marks, herein referred to as Opposer's TONY Marks. Given the fame and widespread favorable public recognition of Opposer's TONY Marks, use on these other products and services is a natural extension of Opposer's earlier usage on food products.

5. Opposer has made substantial investment in advertising and promoting its goods and services under Opposer's TONY Marks since their initial use in 1952. Opposer has

extensively used, advertised, promoted and offered Opposer's goods and services bearing Opposer's TONY Marks to the public through various channels of trade in commerce, including clothing, sports bags, all purpose bags, shopping bags, toys, sports equipment, jewelry, books and pamphlets containing recipes, in entertainment services in the nature of live performances by a costumed character, restaurant services and retail store services, all since dates prior to the filing of Applicant's application, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's TONY Marks and associate the same with Opposer and/or the goods and services sold or provided by Opposer or its controlled licensees.

6. As a result of the aforesaid advertising, promotion and sales, Opposer's TONY Marks are famous and distinctive and became famous and distinctive well prior to the filing of this application and/or well prior to the Applicant's actual use or intended use of the alleged mark.

7. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's Marks, on April 22, 2008, Applicant filed an Intent to Use application for registration of the TONY (word) trademark, for "Animal skins; trunks and traveling bags; umbrellas, parasols and walking sticks; Leather, imitation leather and goods made of leather and imitations of leather, namely, purses and wallets, satchels, trunks, all-purpose sport bags, all-purpose athletic bags, all-purpose carrying bags; attache cases; backpacks; Leather bags for merchandise packaging in the nature of envelopes and pouches of leather; All purpose bags for camping and all purpose bags for climbers; Hunter's game bags; Garment bags for travel; Shopping bags made of mesh; bands of leather; beach bags" in International Class 18. Said application was assigned Serial No. 77/454,574, and was published for Opposition in the Official Gazette of March 17, 2009.

8. Applicant's TONY mark so resembles Opposer's TONY Marks as to be likely, when applied to the proposed goods of Applicant, to cause confusion or mistake or to deceive users resulting in damage and detriment of Opposer and its reputation.

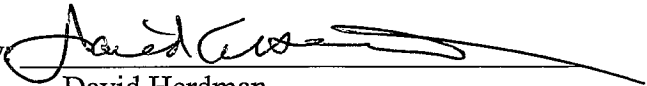
9. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged TONY mark and misled into believing that such goods emanate from, or are licensed by, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

10. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged TONY trademark, as set forth in Applicant's Trademark Application Serial No. 77/454,574, in that the mark is identical to the literal portion of several of Opposer's TONY Marks and common law rights and in view of the related nature of the goods, the great fame of Opposer's TONY Marks and the extensive range of goods and services offered to the public by Opposer and its controlled licensees under Opposer's TONY Marks, will be presumed to emanate from or be approved by or otherwise connected with Opposer, either directly or indirectly.

11. Opposer, upon information and belief, also avers that it will be damaged by the registration by Applicant of the proposed TONY trademark, as set forth in Applicant's Trademark Application Serial No. 77/454,574, in that the alleged mark will dilute the distinctiveness of Opposer's famous TONY Marks within the meaning of the provisions of the Federal Trademark Dilution Act of 1995, as amended by the Trademark Revision Act of 2006.

Wherefore, this Opposer, Kellogg North America Company believes and avers that it will be damaged by registration of the alleged TONY trademark as aforesaid, and pray that said Application Serial No. 77/454,574 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,  
KELLOGG NORTH AMERICA COMPANY

By   
David Herdman  
Assistant Secretary and  
Corporate Counsel  
Kellogg North America Company  
One Kellogg Square  
P.O. Box 3599  
Battle Creek, MI 49016

Date: August 31, 2009

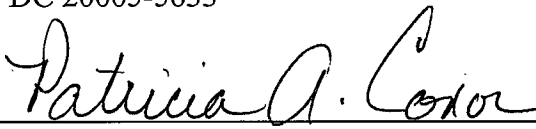
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	)	Filing Date: April 22, 2008
Applicant.	)	Publication Date: March 17, 2009
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following Attorney of Record and Correspondent for Tainan Enterprises Co., Ltd. as listed on the TARR website of the United States Patent and Trademark Office by mailing said copy on August 31, 2009, via First Class Mail, postage prepaid to:

Steven M. Rabin  
Rabin & Berdo, P.C.  
1101 14th Street NW, Suite 500  
Washington, DC 20005-5633

  
\_\_\_\_\_  
Patricia A. Conor

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